

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the matter of |) | |
| |) | |
| Federal-State Joint Board on Universal |) | CC Docket No. 96-45 |
| Service |) | |

**COMMENTS OF
VALOR TELECOMMUNICATIONS ENTERPRISES, LLC**

Valor Telecommunications Enterprises, LLC (Valor)¹ submits the following Comments in response to the Federal Communication Commission's (FCC or Commission) request for comments on the Recommended Decision of the Federal-State Joint Board regarding whether the FCC should modify the list of telecommunications services eligible for universal service fund (USF) support.² The Joint Board generally recommended that the FCC not modify the existing list of services supported by universal service, however the Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services. Valor supports the position of the members of the Joint Board who recommend that equal access should be added to the list of supported services. Also, Valor is disappointed that the Joint Board has unilaterally recommended that Advanced or High-Speed Services not be added at this time to the list

¹ Valor is a privately owned company, formed for the purpose of purchasing approximately 550,000 mostly rural access lines from GTE (now Verizon) in Texas, Oklahoma, New Mexico and Arkansas. These properties were acquired in 2000, and in 2002 Valor acquired Kerrville Communications Corporation, whose wholly owned subsidiary Kerrville Telephone, L.P. also serves rural customers in Texas.

² Notice of Proposed Rulemaking rel. Feb. 25, 2003

of supported services.³ Valor recommends that the Commission reconsider the recommendation of the Joint Board and recognize the reality that thousands of small communities may not get high-speed Internet access without regulatory intervention.

DISCUSSION

Equal Access

The fact that the Joint Board was unable to reach an agreement over whether equal access should be added to the list of supported services demonstrates the controversy that surrounds this issue. The controversy is directly related to the continuing regulatory advantage that wireless carriers have over wireline carriers. The Commission has the opportunity to assure that the customers of all eligible telecommunications carriers (including wireless ETC customers) receive the benefits of equal access. The Commission should adopt the recommendation of the Joint Board members who support adding equal access to the list of supported services.

The supporters provide a series of convincing reasons why equal access should be added to the list of supported services.⁴ Valor supports these arguments and would like to address two specific issues.

First, the supporters correctly assert that there are no legal obstacles to the addition of equal access to the list of supported services.⁵ The opponents argue that section 332(c)(8) of the Telecommunications Act (the Act) prohibits the Commission from requiring Commercial Mobile Radio Service (CMRS) carriers to provide equal access; therefore to include equal access as a supported service for ETCs is prohibited.

³ Joint Board Recommended Decision (rel. July 10, 2002) at 4 through 8.

⁴ Joint Board Recommended Decision (rel. July 10, 2002) at p. 30 through 33.

⁵ Joint Board Recommended Decision (rel. July 10, 2002) at p. 30, para. 76.

As the supporters properly point out, including equal access as a requirement for ETCs is not a violation of section 332 (c)(8) since there is no requirement for CMRS carriers to become an ETC. CMRS carriers would only be required to provide equal access if they choose to become an ETC.⁶ The decision to become an ETC, and to undertake the obligations associated with that designation, is a business decision, not a requirement or mandate prohibited by section 332(c)(8).

Second, it is interesting to note that the CMRS carriers who historically have claimed to be the champions of competition are opposing the addition of equal access, which has proven to be the cornerstone of telecommunications competition. Apparently the CMRS carriers are now conveniently ignoring the success that equal access has had on opening the interexchange markets to competition in an effort to keep the regulatory and financial advantages to the wireless industry of limiting competitive choice. The supporters recognize this competitive disparity and argue, “the principles of competitive and technological neutrality are better achieved if we require wireless and wireline carriers to each provide equal access for universal service funding purposes. To not require the same of all ETCs advantages wireless ETCs over wireline ETCs.”⁷ Valor supports those members of the Joint Board who recommend that the Commission include equal access as a defined service that receives universal service support.

Advanced or High-Speed Services

Valor is disappointed that the Joint Board does not recommend the inclusion of advanced services within the definition of services supported by universal service.

⁶ Joint Board Recommended Decision (rel. July 10, 2002) at p. 32, para. 84.

⁷ Joint Board Recommended Decision (rel. July 10, 2002) at p. 32, para. 82.

Although the Joint Board's Recommended Decision indicates that the vast majority of commenters do not support the addition of advanced services, it also recognizes that some small or rural companies express support for including advanced services to ensure that such services are deployed in rural and high-cost areas.⁸ Valor is one of the companies that support this position.

Valor is one of the nation's largest incumbent local exchange carriers (ILEC) serving rural areas. The company provides local telephone service to more than 550,000 lines in about 250 widely dispersed communities in Oklahoma, New Mexico, Texas, and Arkansas. All but 10 of these communities have a population of less than 10,000 and more than 90 percent have fewer than 5,000 people. Moreover, more than 90 percent of Valor's 261 central offices serve fewer than 5,000 loops and the average Valor central office serves just 2,100 loops. Valor has deployed DSL technology to provide high-speed Internet access service in a number of communities, however there a large number of communities which deployment is uneconomic to do so given that demand for service is not large enough to permit the company to recover its fixed costs within a reasonable period of time. Valor has offered to deploy DSL technology to any community upon the receipt of a bona fide request from at least 75 customers. However, due to the relative size of many of our communities, there are few communities that have been able to generate enough demand to meet this minimum threshold. The FCC has recognized this problem when it concluded that "in all likelihood, market forces alone will not guarantee that many rural Americans will have access to" high-speed Internet access service.⁹

⁸ Joint Board Recommended Decision (rel. July 10, 2002) at p. 4, para. 9.

⁹ Second Section 706 Report, 15 FCC Rcd. 20913 at para. 220 (2000)

The Joint Board in its discussion on whether to include advanced services evaluated each of the four criteria that it shall consider in making its decision. Those criteria are whether the service is: (1) essential to education, public health, or public safety; (2) subscribed to by a substantial majority of residential consumers; (3) being deployed by telecommunications carriers in public telecommunications networks, and (4) consistent with the public interest. The Joint Board also recognized that although each of four criteria must be considered, the Commission has held that it has authority to declare a given service eligible for USF support if the public interest warrants doing so even if one or more of the three other factors does not, by itself, justify that declaration.¹⁰

The Joint Board in their evaluation of the four criteria found that only “the being deployed in the network” criteria was currently being met with regards to advanced services.¹¹ Valor disagrees with the Joint Board that advanced services are not essential to education, public health, or public safety. Today many Internet sites contain graphics-intensive and video-intensive material that is crucial to educators, public safety, and the medical profession. Without access to high-speed connections these sites become virtually unavailable, and deprive rural educators, fire and police departments and health care providers from an essential service needed for them to perform their responsibilities.

Regarding the public interest criteria, the only criteria required to include advanced services as a supported service, the Joint Board concluded that it would be contrary to the public interest to include advanced services because of the high cost of requiring deployment. The Joint Board references the National Exchange Carrier

¹⁰ Fed-State Joint Board on Univ. Service, Report and Order, 12 FCC Rcd. 8776 at para. 61 (1997).

¹¹ Joint Board Recommended Decision (rel. July 10, 2002) at p. 5 through 8.

Association's (NECA) Rural Broadband Cost Study, which estimates a potential \$10.9 billion to upgrade the rural study area lines in NECA's common line pool to DSL capability to meet only a 20 percent demand of the population.¹² Valor believes that the same concern about the high cost that the Joint Board uses as a reason not to include advanced services in the definition of supported services underscores why Valor and other rural carriers will never be able to adequately deploy advanced services in rural areas absent regulatory intervention. An advanced services environment of very high urban deployment and low rural deployment is contrary to the Act. Section 254 (b)(2) provides that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation."

The Joint Board only cites the cost to include advanced services as their reason that it does not meet the public interest standard. However, nowhere in their discussion is there a consideration of the cost to not deploy advanced services in rural areas and the negative public interest impact it would have on those communities. Valor is heartened by the concerns expressed by Commissioner Martin regarding advanced services and the need for support mechanisms to assist the deployment of advanced services in rural and high cost areas throughout the country.¹³ Commissioner Martin indicates a need to pursue a further Notice to assist the Commission in its efforts to ensure that all Americans have access to advanced services. Perhaps such a proceeding would be the appropriate forum to not only examine the cost to deploy advanced services to rural areas, but the public interest "cost" and consequences of not deploying these services.

¹² Joint Board Recommended Decision (rel. July 10, 2002) at p. 6 para. 15.

¹³ Joint Board Recommended Decision (rel. July 10, 2002), Separate Statement of Commissioner Kevin J. Martin Approving in Part and Concurring in Part, at p. 54.

Valor, therefore recommends that the Commission reconsider the Joint Board's recommendation that advanced services continue to be excluded in the definition of supported services, and instead determine that its inclusion is necessary to the public interest. In the alternative, Valor believes the FCC should pursue a further Notice to obtain more data to evaluate how the federal universal service support mechanism could assist advanced service deployment or remove the barriers to its deployment, particularly in rural, remote and high cost areas.

CONCLUSION

The Commission should adopt the position of the members of the Joint Board who support the inclusion of equal access as a defined service that receives universal service support. By doing so, the Commission will bring the additional benefits of interexchange carrier competition to the customers served by competitive eligible telecommunications carriers and it would eliminate one of the unfair regulatory advantages which wireless carriers have over wireline carriers. Also, the Commission should reject the recommendation of the Joint Board that advanced services not be included as a supported service. The Commission should recognize that the deployment of advanced services in rural and high cost areas is vital to the public interest and should be included as a supported service. In the alternative, the Commission should establish a further Notice to gather information to evaluate the necessity and public interest impact of including advanced services in the definition of supported services.

Respectfully submitted,

VALOR TELECOMMUNICATIONS ENTERPRISES, LLC

By: _____

William M. Ojile, Jr.
Senior Vice President, General Counsel and Secretary
VALOR TELECOMMUNICATIONS, LLC
201 E. John Carpenter Freeway
Suite 200
Irving TX 75062
972-373-1000

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